

EXHIBIT 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ENTERTAINMENT STUDIOS
 NETWORKS, INC., a California
 corporation; WEATHER GROUP,
 LLC, a Delaware limited liability
 company,

Plaintiffs,

v.

MCDONALD'S USA, LLC, a Delaware
 limited liability company,

Defendant.

CASE NO. 2:21-cv-04972-FMO-MAA

**PLAINTIFFS ENTERTAINMENT
 STUDIOS NETWORKS, INC. AND
 WEATHER GROUP, LLC'S THIRD
 AMENDED COMPLAINT FOR:**

**1) RACIAL DISCRIMINATION
 IN CONTRACTING IN
 VIOLATION OF 42 U.S.C. §
 1981; AND**

**2) VIOLATION OF THE
 CALIFORNIA UNRUH CIVIL
 RIGHTS ACT (CAL. CIVIL
 CODE § 51.5)**

JURY TRIAL DEMANDED

Assigned for all purposes to the Hon.
 Fernando M. Olguin

Complaint Filed: May 20, 2021
 Case Removed: June 18, 2021
 Trial Date: Jan. 10, 2023

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1 Plaintiffs Entertainment Studios Networks, Inc. (“Entertainment Studios”)
 2 and Weather Group, LLC (“Weather Group”) (together “Plaintiffs”), by and through
 3 their undersigned counsel, hereby allege as follows:

4 **INTRODUCTION**

5 **A. McDonald’s Racist Culture**

6 1. This is a civil rights lawsuit brought by African American-owned
 7 media companies against Defendant McDonald’s USA, LLC (“McDonald’s”) for
 8 racial discrimination in contracting in violation of the Civil Rights Act of 1866,
 9 codified at 42 U.S.C. § 1981, and the California Unruh Civil Rights Act, California
 10 Civil Code § 51.5.

11 2. McDonald’s has a long and troubled history with racial discrimination
 12 directed towards African Americans, and this corporate culture continues to exist
 13 today. Currently, prominent civil rights groups are demanding that McDonald’s fire
 14 its CEO, Chris Kempczinski, over a racist, ignorant and unacceptable text message
 15 he sent to Chicago Mayor Lori Lightfoot.

16 3. In the text, Kempczinski blamed the parents of a young African
 17 American girl who was tragically shot by a third party while sitting in a McDonald’s
 18 parking lot. He also blamed the parents of a young Hispanic boy who was shot and
 19 killed by the police.

20 4. Civil rights groups have called for boycotts and protests in response to
 21 this racist text message. U.S. Representative Bobby Rush of Illinois also advocated
 22 for Kempczinski to be removed as CEO. Congressman Rush stated about the text
 23 message: “This is a deplorable message, and one that is completely unacceptable
 24 for the CEO of a powerful multinational corporation—let alone a corporation that
 25 markets aggressively to communities of color and publicly proclaims that ‘Black
 26 Lives Matter’—to espouse.”

27 5. In addition, an adviser to union pension funds that hold approximately
 28 2.5 million shares of McDonald’s stock formally asked the Board of Directors to

1 retain an independent, third party to conduct an audit of the entire organization to
 2 discover the full extent of its treatment of African American employees, executives,
 3 suppliers, franchisees and vendors.

4 6. Kempczinski's racially derogatory comment is even more shocking
 5 given that McDonald's was named recently in two prominent racial discrimination
 6 lawsuits. Last year, former African American senior executives sued McDonald's
 7 for racial discrimination and retaliation in *Victoria Guster-Hines and Domineca*
 8 *Neal v. McDonald's USA, LLC, et al.* (N.D. Ill. Case No. 1:20-cv-00117). In that
 9 lawsuit, the former executives claim that Kempczinski told them, in a 2019 meeting
 10 about the lack of African American representation in senior management, that the
 11 "numbers [of African Americans] don't matter." The executives also claim that
 12 McDonald's labeled them as "Angry Black Women."

13 7. Also in 2020, former African American franchisees sued McDonald's
 14 for racial discrimination in *Christine Crawford, et al. v. McDonald's USA, LLC, et*
 15 *al.*, (N.D. Ill. Case No. 1:20-cv-05132). The lawsuit details McDonald's history of
 16 discrimination against African American franchisees, including: (1) denying entry to
 17 African American franchisees from 1955 to 1968 following the assassination of Dr.
 18 Martin Luther King, Jr.; (2) boycotts by African Americans to force further
 19 admission for African American franchisees in certain cities; and (3) forcing African
 20 American franchisees to open in unfavorable locations with racially discriminatory
 21 restrictions for expansion and success.

22 8. Recently, McDonald's paid \$33.5 million to settle a case brought by an
 23 African American business owner alleging racial discrimination in contracting in
 24 violation of 42 U.S.C. § 1981. In that case, *Washington v. McDonald's USA, LLC*,
 25 Case No. 4:21-cv-00367 (N.D. Ohio), Herbert L. Washington ("Washington")
 26 claimed that McDonald's admitted to a discriminatory racial-steering policy which
 27 intentionally deprived African Americans from operating franchise stores in prime
 28 locations. Washington also alleged that, as a result of McDonald's racist policies,

1 African American owners of franchise stores earned on average \$700,000 less in
2 annual sales per store as compared to White owners.

3 9. This is the same racist corporate culture that has caused Plaintiffs the
4 injuries alleged herein. Per these lawsuits and the allegations set forth herein,
5 McDonald's has a pattern and practice of discriminating against African Americans
6 in contracting in violation of 42 U.S.C. § 1981.

7 **B. McDonald's Racism Here**

8 10. Plaintiff Entertainment Studios is an African American-owned media
9 company that owns and operates high-definition lifestyle networks that are widely
10 distributed throughout the country. Entertainment Studios also produces television
11 programming that runs on Entertainment Studios' lifestyle networks and in
12 broadcast syndication. Entertainment Studios is solely owned by Byron Allen, an
13 African American media entrepreneur.

14 11. McDonald's and its parent corporation are one of the largest
15 organizations in the world, with over 39,000 stores worldwide generating over \$100
16 billion in annual sales. In 2019, McDonald's spent approximately \$1.6 billion in
17 television advertising in the United States. On information and belief, less than \$5
18 million (0.31%) of that budget was spent on African American-owned media. In
19 fact, McDonald's spending on African American-owned media is less than half of
20 what it pays its CEO, whose compensation in 2020 exceeded \$10 million.

21 12. With African Americans representing approximately 40% of fast food
22 consumers, it is estimated that McDonald's stores earn billions of dollars each year
23 from African Americans. This money is taken out of the African American
24 community but not re-invested in any meaningful way.

25 13. McDonald's has followed this same pattern with respect to
26 Entertainment Studios. McDonald's has refused to advertise on Entertainment
27 Studios' lifestyle networks since they were launched in 2009. Yet, during this same
28 period, McDonald's purchased significant advertising on similarly situated, white-

1 owned networks.

2 14. McDonald's racial discrimination against Entertainment Studios is the
 3 result of racial animus and racial stereotyping. McDonald's uses a multi-tiered
 4 approach to purchase advertising. In the "general market" tier, McDonald's
 5 contracts with an advertising agency to act as its intermediary to allocate its budget
 6 among white-owned media companies. The vast majority of McDonald's television
 7 advertising budget is spent in this "general market" tier.

8 15. But McDonald's has another tier reserved for media companies that
 9 produce content "targeted" to an African American audience. McDonald's contracts
 10 with a different advertising agency for this African American tier. McDonald's
 11 advertising budget for the African American tier is much smaller than the general
 12 market (i.e. white-owned media) budget which is not spent on African American-
 13 owned media.

14 16. These two tiers are separate but not equal. The African American
 15 agency budget is *de minimis* as compared to the general market budget.

16 17. While pernicious and deplorable in its own right, McDonald's adds
 17 insult to injury by falsely labeling Entertainment Studios as a media company that
 18 produces content solely for African American audiences. In doing so, McDonald's
 19 shut the door on Entertainment Studios for McDonald's general market budget.

20 18. This is intentional racial stereotyping and discrimination. Several years
 21 ago, before launching its own networks, Entertainment Studios produced some
 22 programming that was targeted to African American audiences, and McDonald's
 23 advertised on those shows in broadcast syndication. During this period,
 24 McDonald's pigeonholed Entertainment Studios as a media company producing
 25 African American content.

26 19. McDonald's continued to stereotype Allen's Entertainment Studios in
 27 this fashion even as Allen grew Entertainment Studios into a larger, broader media
 28 company, whose channels have widespread appeal among all races and do not target

1 just African Americans.

2 20. Entertainment Studios' lifestyle networks are not targeted to African
3 American audiences. They feature cooking shows, celebrity interviews, court
4 television, comedy and other general market lifestyle programming that compete
5 against white-owned lifestyle networks, such as Animal Planet, Cooking Channel,
6 Comedy Central, Destination America, E!, Food Network, HLN, Motor Trend,
7 Oxygen, Travel Channel and many others.

8 21. McDonald's advertises on these white-owned networks through its
9 general market advertising budget, but refuses to advertise on the Entertainment
10 Studios lifestyle networks because they are owned by an African American.
11 McDonald's is interested in whether Allen's Entertainment Studios can deliver an
12 African American audience, assuming that, because Allen is African American, his
13 content must target that audience. That is a false assumption and is blatant racism.

14 22. This racial stereotyping and discrimination continued even after Allen
15 acquired Weather Group in 2018. Weather Group owns and operates the well-
16 known cable news network The Weather Channel. The Weather Channel is not an
17 African American targeted network.

18 23. But after Allen acquired the network, McDonald's refused to contract
19 with Weather Group while at the same time advertising on similarly situated, white-
20 owned networks in the general market tier.

21 24. Television companies like Entertainment Studios and Weather Group
22 depend on advertising revenue to survive. It is the lifeblood of their business. By
23 depriving access to one of the largest advertising budgets in the world, McDonald's
24 discriminatory treatment of Entertainment Studios and Weather Group has caused,
25 and continues to cause, significant damage.

26 25. McDonald's racist treatment of Entertainment Studios and Weather
27 Group is also hypocritical. McDonald's receives billions from African American
28 consumers who patronize its restaurants. Indeed, McDonald's specifically targets

1 African American consumers through its tiered advertising structure, demonstrating
2 McDonald's conscious and deliberate efforts to keep African Americans buying
3 McDonald's high calorie, high sugar, high fat and high sodium food products while
4 at the same time depriving African American-owned businesses—like
5 Entertainment Studios and Weather Group—from contracting like it does with
6 white-owned networks.

7 26. As explained in detail below, the white-owned networks that
8 McDonald's does contract with are similarly situated with Entertainment Studios'
9 networks and The Weather Channel, as they have similar distribution, similar
10 programming, and target and reach similar demographic groups, including their
11 ability to reach fast food consumers, in particular.

12 27. McDonald's, like much of corporate America these days, publicly touts
13 its commitment to diversity and inclusion, but this is nothing more than empty
14 rhetoric as shown by the racial discrimination in contracting herein.

15 28. Racial discrimination in contracting is prohibited by the Civil Rights
16 Act of 1866, codified at 42 U.S.C. § 1981, and the California Unruh Civil Rights
17 Act. Section 1981, in particular, ensures that all people have the same right to make
18 and enforce contracts "as is enjoyed by white citizens." The statute was enacted
19 right after the Civil War to provide economic inclusion for freed slaves by
20 eradicating racial discrimination in contracting.

21 29. Sadly, in the 150 years since this statute was enacted, African
22 American businesses, and African American-owned media in particular, still have
23 not been able to contract and achieve economic inclusion as enjoyed by white
24 citizens and white-owned businesses.

25 30. By and through this action, Plaintiffs demand that McDonald's remedy
26 the civil rights violations alleged herein and compensate Plaintiffs for the harm
27 caused thereby as permitted by law, which is estimated to be in excess of \$10
28 billion.

PARTIES

31. Plaintiff Entertainment Studios is a California corporation headquartered in Los Angeles, California.

32. Plaintiff Weather Group is a Delaware limited liability company headquartered in Atlanta, Georgia.

33. Defendant McDonald's is a Delaware limited liability company headquartered in Chicago, Illinois. On information and belief, McDonald's is wholly owned by McDonald's Corporation, a Delaware corporation headquartered in Oakbrook, Illinois, just outside Chicago.

JURISDICTION AND VENUE

34. This Court has subject matter jurisdiction over this controversy under 28 U.S.C. § 1331 and 28 U.S.C. § 1367. This Court has personal jurisdiction over McDonald's under the specific jurisdiction doctrine as the claims asserted herein arose out of McDonald's contacts with the forum state.

35. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district.

FACTS COMMON TO ALL CAUSES OF ACTION

36. Plaintiff Entertainment Studios was founded in 1993 by Byron Allen, an African American actor, comedian and media entrepreneur. Allen is the sole owner of Entertainment Studios.

37. Allen first made his mark in the television world in 1979 as the youngest comedian ever to appear on "The Tonight Show Starring Johnny Carson." He thereafter served as the co-host of NBC's "Real People," one of the first reality shows on television.

38. Alongside his "on-screen" career, Allen developed a keen understanding of the "behind the scenes" television business. Allen used his industry knowledge to build Entertainment Studios into an independent, global

1 media company.

2 **A. Allen Grows Entertainment Studios**

3 39. Initially, Entertainment Studios produced non-fiction television shows,
4 including interview series (such as *Entertainers with Byron Allen*) and court
5 television. These shows were distributed via broadcast syndication, which is the
6 process of licensing shows to local broadcast affiliates without the need to contract
7 with a broadcast network.

8 40. Entertainment Studios' television shows had general audience appeal,
9 in that they did not specifically target any particular demographic group as the core
10 audience. For example, the interview series *Entertainers with Byron Allen* features
11 interviews of prominent celebrities (such as George Clooney, Tom Cruise, Julia
12 Roberts, among many others) on the red carpet and gives the audience a behind-the-
13 scenes look into blockbuster films featuring A-list stars.

14 41. Entertainment Studios did not own or operate networks during this
15 early period, and so its programming ran on local broadcast networks in syndication.

16 42. In 2009, Entertainment Studios launched six high-definition television
17 networks: Comedy.TV; Recipe.TV; MyDestination.TV; ES.TV; Pets.TV; and
18 Cars.TV. In 2012, Entertainment Studios launched its seventh network,
19 JusticeCentral.TV. These seven networks are referred to herein as the "ESN
20 Lifestyle Networks."

21 43. The ESN Lifestyle Networks feature lifestyle programming with
22 general audience appeal. The networks do not specifically target any racial
23 demographic; they are not African American networks like, for example, Black
24 Entertainment Television.

25 44. The ESN Lifestyle Networks feature content that has been nominated
26 for, and won, Emmy® Awards.

27 45. These networks are widely distributed and have high viewer demand.
28 By 2020, Entertainment Studios secured carriage contracts with more than 60 multi-

1 channel video programming distributors (“MVPD”), including the largest MVPDs
2 in the nation such as Comcast, AT&T U-Verse, Charter/Spectrum, DirecTV, AT&T
3 TV Now, DISH Network, VerizonFIOS, Mediacom, Frontier Communications and
4 RCN. These MVPDs distribute the ESN Lifestyle Networks to over 180 million
5 cumulative subscribers in all 50 states.

6 46. In 2018, Allen, through Allen Media Group, a company he founded and
7 solely owns, purchased Weather Group, the parent company that owns and operates
8 The Weather Channel.

9 47. For nearly four decades, The Weather Channel has been the leader in
10 weather coverage, providing the most comprehensive analysis of any media outlet.
11 For ten years in a row, Harris Poll has ranked The Weather Channel as the “TV
12 News Brand of the Year,” recognizing The Weather Channel as the most trusted
13 brand in cable news for the past decade.

14 **B. McDonald’s Pigeonholes Entertainment Studios as Black-Targeted**

15 48. McDonald’s and its parent corporation are the world’s leading global
16 foodservice retailers with over 39,000 locations in over 100 countries. In 2019,
17 McDonald’s worldwide stores generated over \$100 billion in revenue.

18 49. In 2019, McDonald’s spent approximately \$1.6 billion advertising on
19 television in the United States. Of that budget, McDonald’s spent less than \$5
20 million on African American-owned media companies. To put that into perspective,
21 McDonald’s paid its CEO double that amount, more than \$10 million, in 2020.

22 50. For television advertising, McDonald’s contracts with advertising
23 agencies as intermediaries to facilitate buying advertising time on television
24 networks. These ad agencies are merely intermediaries. McDonald’s makes the
25 ultimate decision whether to contract.

51. The typical contracting process for McDonald's is as follows: (1) the agency will submit a request for proposal ("RFP")¹ to the media company (here, Plaintiffs); (2) the media company will then present opportunities to advertise to the advertising agency; (3) the agency will present this opportunity to McDonald's; (4) McDonald's will decide whether it intends to offer a contract to the media company and, if so, on what terms; and (5) the agency will communicate that contract offer to the media company. If an offer is made, it is either accepted or the parties will enter into negotiations.

52. The media companies do not offer contracts to the agency or McDonald's. Rather, in this industry, it is the opposite. Media companies do not present deal terms, such as total amount of ad spend, pricing, and number of available ad spots. Media companies present opportunities and McDonald's will make an offer to spend a certain amount of money at certain prices on certain media properties.

53. McDonald's here refused to offer to contract with Plaintiffs to advertise on their networks and syndicated programming. Plaintiffs repeatedly presented their advertising opportunities to McDonald's ad agencies, but McDonald's refused to offer advertising contracts on any terms for Plaintiffs' networks or broadcast syndicated programming.

54. McDonald's also employs a "tiered" structure for advertising spending that explicitly differentiates on the basis of race. For "general market" media companies (i.e. white-owned media companies), McDonald's contracts with a general market advertising agency who works with non-African American-owned

¹ In recent years, the RFP submitted by McDonald's general market agency is not a written RFP. Rather, it is a video presentation.

1 media companies to allocate McDonald's annual advertising budget.

2 55. But McDonald's has a different tier for African American media. For
3 the McDonald's African American advertising budget—which is *de minimis*
4 compared to the general market budget—McDonald's contracts with a different
5 advertising agency. McDonald's African American advertising agency is Burrell
6 Communications ("Burrell").

7 56. The African American tier is less favorable than the general market
8 tier. McDonald's pays lower prices for African American advertising. McDonald's
9 uses the Cost Per Thousand ("CPM") pricing mechanism to buy advertising time.
10 McDonald's pays higher prices (higher CPMs) for general market media companies,
11 but forces African American media companies to pitch for business using
12 McDonald's lower CPM for African American content. This enables McDonald's
13 to buy more advertising time for less money to reach African American audiences.

14 57. McDonald's also requires African American media companies to agree
15 to contract guarantees in terms of reaching an African American audience. Thus,
16 even if McDonald's agrees to purchase advertising time, McDonald's can refuse to
17 spend the contract amount or force African American media companies to provide
18 additional advertising for free if they do not hit the contract guarantees.

19 58. Entertainment Studios was shut out of the general market tier and
20 forced to bid for advertising in the less favorable African American tier. Initially,
21 McDonald's purchased advertising on Entertainment Studios' African American
22 shows that ran in broadcast syndication. In doing so, McDonald's stereotyped the
23 entire company as an African American media company.

24 59. For over two decades, McDonald's classified Entertainment Studios as
25 a media company that owns and produces African American content, even though
26 the ESN Lifestyle Networks have general audience appeal—they are not African
27 American networks. McDonald's viewed Entertainment Studios as an African
28 American media company because Entertainment Studios is owned by an African

1 American.

2 60. Entertainment Studios raised these issues with McDonald's, but
3 nothing changed. Allen spoke directly with McDonald's former Chief Marketing
4 Officer, Deborah Wahl, while she was CMO, and told her that McDonald's was
5 discriminating against African American-owned media, and Entertainment Studios
6 in particular. Ms. Wahl did not fix these issues and McDonald's continued
7 discriminating against African American-owned media.

8 **C. McDonald's Continues Its Racial Stereotyping After Allen**
9 **Acquires Weather Group**

10 61. McDonald's continued to label Entertainment Studios as an African
11 American media company even after Allen acquired Weather Group in 2018. Allen
12 acquired Weather Group for \$300 million, and invested considerably in The
13 Weather Channel. This has led to remarkable success, as The Weather Channel
14 continues to be recognized as the most trusted brand in cable news.

15 62. The Weather Channel has broad, general audience appeal. It is not an
16 African American network.

17 63. Yet, McDonald's shut out The Weather Channel from its general
18 market advertising budget while, at the same time, advertising considerably out of
19 its general market budget with similarly situated, white-owned channels. This is
20 blatant racial discrimination, denying Plaintiffs the same right to make and enforce
21 contracts as is enjoyed by white citizens, in violation of § 1981.

22 64. Since Allen acquired Weather Group, marketing representatives for
23 Weather Group have pitched The Weather Channel to McDonald's ad agency.
24 These presentations are made twice a year. One presentation is made in the Spring
25 and another is made in the Fall.

26 65. These presentations showcase the significant advertising opportunities
27 that are available for McDonald's on The Weather Channel. The presentations are
28 updated to show how The Weather Channel is well suited to execute on a

1 McDonald's specific ad campaign. Yet McDonald's refused to purchase any ad
2 time on the network following each presentation. Weather Group asked for
3 feedback from McDonald's, and McDonald's either did not give an explanation for
4 its refusal to contract or gave a pretextual excuse.

5 66. In fact, McDonald's refused to contract with Weather Group to
6 purchase advertising time on The Weather Channel each year since Allen acquired it
7 in 2018, while at the same time contracting with white-owned media companies to
8 advertise on similarly situated networks.

9 **D. Plaintiffs Are Repeatedly Denied an Advertising Contract**

10 67. McDonald's discriminatory treatment of Plaintiffs has been ongoing
11 and pervasive for over a decade. Since the launch of Entertainment Studios'
12 networks in 2009, ESN has made multiple offers each year to enter into a contract
13 with McDonald's whereby McDonald's purchases advertising time on the networks.
14 McDonald's has refused to contract.

15 68. Entertainment Studios has repeatedly sought to contract with
16 McDonald's through its general tier advertising agency, OMD Worldwide
17 ("OMD"). McDonald's has blocked these efforts to contract for several years.

18 69. OMD has confirmed that McDonald's will not even consider
19 advertising with Entertainment Studios through OMD. This is racial discrimination
20 that directly harms Entertainment Studios. OMD is the gatekeeper to McDonald's
21 much larger general market advertising budget. By shutting Entertainment Studios
22 out from OMD, McDonald's has effectively shut Entertainment Studios out from its
23 general market advertising budget.

24 70. On June 18, 2012, OMD representative, Chris Geraci ("Geraci"), told
25 Entertainment Studios' Darren Galatt ("Galatt"), that OMD would try to get
26 Entertainment Studios more business with McDonald's. After speaking with
27 McDonald's, Geraci told Galatt that McDonald's will not consider advertising with
28 Entertainment Studios through OMD.

71. Entertainment Studios continued to press in the hopes that McDonald's would change its mind and allow Entertainment Studios to pitch for business through OMD. As Entertainment Studios launched new networks and added more content that was not African American targeted, Entertainment Studios diligently tried to contract with McDonald's through OMD.

72. But McDonald's shut the door. On February 29, 2016, Debbie Innes ("Innes") of OMD expressly told Galatt that Burrell is the agency of record for McDonald's and Entertainment Studios.

73. McDonald's has recently claimed that OMD is responsible for making advertising decisions on behalf of McDonald's, but as the above shows, that is not true. Indeed, OMD's other clients, such as Pepsi and Hershey's, grant Entertainment Studios access to their general market advertising budgets through OMD.

74. Adding insult to injury, McDonald's refused to contract to advertise on Entertainment Studios' networks through its African American advertising agency. Entertainment Studios pressed for answers, but McDonald's would not explain the reasons for its refusals to contract.

75. Patrick Olson ("Olson"), Burrell's Associate Buying Director, admitted Burrell could not even get an explanation from McDonald's. Olson wrote to Galatt on January 25, 2019, stating Burrell is "constantly asking for feedback from McD's, radio silence. We'll advise when/if we hear anything, nothing we can share at the moment."

76. McDonald's has claimed in this litigation that Plaintiffs did not request a contract from McDonald's within the past two years. This claim is false.

77. Weather Group met with McDonald's agency OMD in or about November 2019 and requested McDonald's contract to advertise on The Weather Channel. Kristin Freibott, Kari Evans and Maggie Tibbitts of OMD attended the meeting. After the meeting, McDonald's did not offer to contract with Weather

1 Group to advertise on The Weather Channel on any terms.

2 78. On or about April 20, 2020, Weather Group executives met with OMD
3 representatives to request McDonald's contract to advertise on The Weather
4 Channel. Emily Adams, Kari Evans and Maggie Tibbits of OMD attended the
5 meeting. After the meeting, McDonald's did not offer to contract with Weather
6 Group to advertise on The Weather Channel on any terms.

7 79. In or about early October 2020, Weather Group and Entertainment
8 Studios met with OMD to request McDonald's contract to advertise on The Weather
9 Channel and the ESN Lifestyle Networks. Entertainment Studios and Weather
10 Group made this presentation as a portfolio group to circumvent McDonald's racial
11 stereotyping so that OMD could finally consider Entertainment Studios' networks
12 and other media properties. After the meeting, McDonald's did not offer to contract
13 with Plaintiffs to advertise on The Weather Channel or the ESN Lifestyle Networks
14 on any terms.

15 80. On October 28, 2020, the President (Ad Sales) of Weather Group,
16 Barbara Bekkedahl, spoke with Chris Bocket, of OMD, to request McDonald's
17 contract to advertise on The Weather Channel, the ESN Lifestyle Networks, and
18 other media properties owned by Allen. After the meeting, McDonald's did not
19 offer to contract with Plaintiffs to advertise on The Weather Channel or the ESN
20 Lifestyle Networks on any terms.

21 81. On or about November 11, 2020, Weather Group met with OMD to
22 request McDonald's contract to advertise on The Weather Channel, the ESN
23 Lifestyle Networks, and other media properties owned by Allen. Emily Adams,
24 Kari Evans and Maggie Tibbits of OMD attended the meeting. After the meeting,
25 McDonald's did not offer to contract with Plaintiffs to advertise on The Weather
26 Channel or the ESN Lifestyle Networks on any terms.

27 82. On or about April 7, 2021, Weather Group and Entertainment Studios
28 met with OMD to request McDonald's contract to advertise on The Weather

1 Channel, the ESN Lifestyle Networks, and other media properties owned by Allen.
2 Molly Nache of OMD attended the meeting. After the meeting, McDonald's did not
3 offer to contract with Plaintiffs to advertise on The Weather Channel or the ESN
4 Lifestyle Networks on any terms.

5 83. Entertainment Studios also continued to request that McDonald's
6 contract to advertise on Entertainment Studios' programming that is distributed via
7 broadcast syndication.

8 84. On July 25, 2019, Galatt submitted to Patrick Olson and Nick Violette
9 of Burrell a request that McDonald's contract to advertise whereby McDonald's
10 would purchase the following ad time: (1) one 30 second spot on *Funny You Should*
11 *Ask* each weekday for 52 weeks at \$5,000 per spot (\$1.3 million total); (2) one 30
12 second spot on "Daily Network"² each weekday for 52 weeks at \$10,500 per spot
13 (\$2.73 million total); and (3) ten 30 second spots on Entertainment Studios' special
14 segments at \$10,000 per spot (\$100,000 total). McDonald's refused to contract.

15 85. Entertainment Studios continued to request an advertising contract
16 from McDonald's for Entertainment Studios' syndicated programming in 2020 and
17 2021. On April 16, 2020, Galatt asked Patrick Olson of Burrell what McDonald's
18 advertising plans were for the second half of 2020 and 2021. Galatt made this
19 request so that Entertainment Studios and its syndicated programming would be
20 considered for an advertising contract from McDonald's for the second half of 2020
21 and 2021. McDonald's refused to contract.

22 86. On December 9, 2020, Galatt sent a detailed presentation on behalf of
23

24
25 ² "Daily Network" includes various syndicated programming such as *Comics*
26 *Unleashed*, *America's Court w/ Judge Ross*, *Justice for All w/ Cristina Perez*, and
27 many others.
28

1 Entertainment Studios to Adele Lassere of Burrell in an effort to secure an
2 advertising contract from McDonald's. McDonald's refused to contract.

3 87. Entertainment Studios wanted to pitch its syndicated programming to
4 OMD so that it could potentially access McDonald's much larger general market
5 advertising budget, but McDonald's continued to force Entertainment Studios to
6 pitch its syndicated programming to Burrell as a result of the same racial profiling
7 and stereotyping that McDonald's engaged in for over a decade.

8 88. McDonald's and its agencies did not disclose which McDonald's
9 employees or officers made the decisions not to contract with Plaintiffs. Plaintiffs
10 cannot allege this information without the benefit of discovery.

11 **E. McDonald's Intentional Racism As Compared to Similarly-**
12 **Situated, White-Owned Competitors**

13 89. Entertainment Studios has suffered, and continues to suffer, significant
14 harm as a result of McDonald's racism. Despite owning award-winning networks
15 that are distributed by over 60 major MVPDs and reach over 180 million cumulative
16 subscribers in all 50 states, McDonald's refused to advertise on the ESN Lifestyle
17 Networks. In addition, McDonald's has not purchased advertising on The Weather
18 Channel since Allen acquired it in 2018.

19 90. While refusing to purchase advertising time on the ESN Lifestyle
20 Networks and The Weather Channel, McDonald's advertised on similarly situated,
21 white-owned networks, including, but not limited to, Animal Planet, Cooking
22 Channel, Comedy Central, CNN, Destination America, E!, Food Network, HLN,
23 Motor Trend, Travel Channel, Oxygen, MSNBC, and many others.

24 91. These comparator networks are similarly situated with Plaintiffs'
25 networks for several reasons, including that they (1) are carried by the same MVPDs
26 and therefore reach the same subscribers, (2) feature similar content and (3) target
27 and reach the same demographic age groups.

28 a. **The Weather Channel:** The Weather Channel features news and

1 information programming that targets and reaches the same audience as its
2 competitor news and information networks, such as CNN, MSNBC and HLN. The
3 Weather Channel and its competitor networks feature live news shows on weekday
4 mornings and afternoons that target and reach the same audience. Like The Weather
5 Channel, CNN, MSNBC and HLN also broadcast scripted news programs that
6 feature in-depth reporting. The Weather Channel is also similar to CNN, MSNBC
7 and HLN in that, for all four networks, over 75% of their audience is age 50 or
8 older. From an advertiser's perspective, The Weather Channel is similarly situated
9 in all material respects with CNN, MSNBC and HLN.

10 b. Cars.TV: Cars.TV features award-winning content for viewers
11 interested in automotive content. Cars.TV broadcasts auto shows, private
12 collections owned by celebrities (Jay Leno, Jerry Seinfeld, John Cena, and others),
13 auto customizations and innovations, exclusive car auctions and racing content. The
14 network Motor Trend features similar content, and it targets and reaches the same
15 demographic age groups. From an advertiser's perspective, Cars.TV is similarly
16 situated in all material respects with Motor Trend.

17 c. JusticeCentral.TV: JusticeCentral.TV is a 24-hour HD cable
18 network that features courtroom shows that target and reach the same audience as
19 true crime networks such as Oxygen and HLN. JusticeCentral.TV is also similar to
20 Oxygen and HLN in that, for all three networks, over 75% of their audience is age
21 50 or older. From an advertiser's perspective, JusticeCentral.TV is similarly
22 situated in all material respects with Oxygen and HLN.

23 d. Comedy.TV: Comedy.TV features standup comedy, comedy
24 game shows and talk shows with comedians. Comedy.TV features similar content,
25 and targets and reaches the same demographic age groups as Comedy Central.
26 From an advertiser's perspective, Comedy.TV is similarly situated in all material
27 respects with Comedy Central.

28 e. Recipe.TV: Recipe.TV features cooking shows that are similar

1 to, and that target and reach the same demographic age groups as, Food Network
2 and Cooking Channel. From an advertiser's perspective, Recipe.TV is similarly
3 situated in all material respects with Food Network and Cooking Channel.

4 f. MyDestination.TV: MyDestination.TV features travel-related
5 content that is similar to, and that targets and reaches the same demographic age
6 groups as, Destination America and Travel Channel. From an advertiser's
7 perspective, MyDestination.TV is similarly situated in all material respects with
8 Destination America and Travel Channel.

9 g. Pets.TV: Pets.TV features pet and animal-focused content that is
10 similar to, and targets and reaches the same demographic age groups as, Animal
11 Planet. From an advertiser's perspective, Pets.TV is similarly situated in all
12 material respects with Animal Planet.

13 h. ES.TV: ES.TV features entertainment news programming, such
14 as celebrity interviews and Hollywood news, that is similar to, and that targets and
15 reaches the same demographic age groups as, E! From an advertiser's perspective,
16 ES.TV is similarly situated in all material respects with E!

17 92. These allegations show that Plaintiffs' networks are similarly situated
18 with white-owned networks that McDonald's advertises on. Moreover, the Ninth
19 Circuit has held courts cannot determine on the pleadings alone that two networks
20 are dissimilar. In *National Association of African American-Owned Media v.*
21 *Charter Communications, Inc.*, 915 F.3d 617, 626 n.8 (9th Cir. 2019)³, the Ninth
22 Circuit held that the similarly situated inquiry with respect to television networks
23 requires "a thorough comparison" that "would require a factual inquiry that is
24 inappropriate in reviewing a 12(b)(6) motion." This holding is in line with federal

25
26 ³ While the Supreme Court vacated this decision, it did so on other grounds.
27
28

1 court decisions throughout the country.

2 **1. Plaintiffs' Media Properties Have Higher Ratings**

3 93. In this litigation, McDonald's has argued that Plaintiffs' networks and
4 syndicated programming are not similarly situated with white-owned networks that
5 McDonald's advertises on because Plaintiffs' networks and syndicated
6 programming have lower viewership. This argument is unsupported and will be
7 proven false at trial.

8 94. For the TV advertising market, programs and networks are similarly
9 situated in all material respects even if they have different ratings (i.e., viewership).
10 Differences in ratings can lead to differences in advertising revenue commitments
11 and other contract terms, but that does not make networks dissimilar from an
12 advertisers perspective and it does not justify a flat refusal to contract.

13 95. In addition, Entertainment Studios and Weather Group's networks and
14 syndicated programming have higher viewership than networks that McDonald's
15 paid to advertise on.

16 96. For example, McDonald's advertises on HLN and Destination America
17 but not The Weather Channel. The Weather Channel has higher ratings and a wider
18 distribution than these two networks, and yet McDonald's chooses to advertise on
19 HLN and Destination American but not The Weather Channel.

20 97. In addition, Entertainment Studios' programming has higher ratings
21 than networks that receive advertising revenue from McDonald's. Entertainment
22 Studios packages its court drama programs. This package ("ES Court Combo")
23 offers advertisers an opportunity to pay to advertise on these programs as they run in
24 broadcast syndication. It grants advertisers the opportunity to reach more viewers
25 than networks such as MSNBC, CNN, Oxygen and many other networks.

26 98. In 2021, ES Court Combo had an average Nielsen household rating of
27 0.78, which means 0.78% of households with a television watched these programs.
28 This rating was much higher than the Nielsen household ratings for networks that

1 McDonald's pays to advertise on, such as MSNBC (0.44), CNN (0.34) and E!
 2 (0.08). ES Court Combo also had an average Nielsen rating for adults over the age
 3 of 18 of 0.42. This rating was much higher than the Nielsen adult ratings for
 4 networks that McDonald's pays to advertise on, such as MSNBC (0.25), CNN
 5 (0.19), and Oxygen (0.08).

6 **2. Plaintiffs' Media Properties Offer McDonald's A Better** 7 **Opportunity To Reach Its Customers**

8 99. The ESN Lifestyle Networks and The Weather Channel are more
 9 popular with McDonald's and fast-food customers in general as compared to white-
 10 owned networks that McDonald's advertises on.

11 100. MRI-Simmons is the most well-known and trusted survey data provider
 12 in the television industry. Plaintiffs use MRI-Simmons survey data to better
 13 understand their audience. On information and belief, McDonald's and its
 14 advertising agencies use MRI-Simmons survey data as well.

15 101. Advertisers want to connect with and reach their own customers to
 16 make sure they continue to remain a customer. McDonald's is no different. MRI-
 17 Simmons survey data helps media companies and advertisers better understand how
 18 they are currently reaching their audience and where there are opportunities to grow
 19 their audience/customer base.

20 102. Plaintiffs' MRI-Simmons survey data shows that McDonald's
 21 customers are more likely to watch Entertainment Studios programming than
 22 Entertainment Studios' competitor networks.

23 103. Plaintiffs' MRI-Simmons survey data shows that a McDonald's
 24 customer over the age of 18 is fifteen percent (15%) more likely to watch
 25 Entertainment Studios programming as compared to the general population.

26 104. The viewers of Entertainment Studios' competitor networks, however,
 27 are much less likely to be McDonald's customers. MRI-Simmons survey data
 28 shows that McDonald's customers over the age of 18 are only:

- a. four percent (4%) more likely to watch Animal Planet than the general population;
- b. six percent (6%) more likely to watch Comedy Central than the general population;
- c. two percent (2%) more likely to watch Cooking Channel than the general population;
- d. five percent (5%) more likely to watch Destination America than the general population;
- e. two percent (2%) more likely to watch Food Network than the general population;
- f. one percent (1%) more likely to watch Motor Trend than the general population;
- g. five percent (5%) more likely to watch Oxygen than the general population; and
- h. four percent (4%) more likely to watch Travel Channel than the general population.

105. The same is true for The Weather Channel. McDonald's customers over the age of 18 are six percent (6%) more likely to watch The Weather Channel. Yet, McDonald's customers over the age of 18 are only one percent (1%) more likely to watch CNN, three percent (3%) more likely to watch MSNBC and four percent (4%) more likely to watch HLN.

106. Customers who eat at McDonald's regularly are even more likely to watch The Weather Channel as compared to CNN and MSNBC. McDonald's customers who eat at McDonald's four or more times a month are seventeen percent (17%) more likely to watch The Weather Channel as compared to the general population. Yet the same customers are five percent (5%) less likely to watch MSNBC and six percent (6%) less likely to watch CNN than the general population.

107. This MRI-Simmons data shows that if McDonald's were interested in

1 reaching its customers, which is a goal of nearly every advertiser, McDonald's
2 would be more inclined to advertise on the ESN Lifestyle Networks and The
3 Weather Channel as compared to the competitor networks.

4 108. Thus, The Weather Channel and the ESN Lifestyle Networks are
5 similar—and in some cases more attractive—from an advertiser's perspective as
6 compared to the comparator networks, and yet McDonald's chooses to spend its
7 advertising budget on the comparator networks and not on The Weather Channel
8 and the ESN Lifestyle Networks.

9 109. This is textbook differential treatment on the basis of race that violates
10 the Civil Rights Act of 1866, 42 U.S.C. § 1981, and the California Unruh Civil
11 Rights Act.

12 3. McDonald's Gave Plaintiffs Pretextual Excuses

13 110. McDonald's refusal to contract is not based on race-neutral reasons as
14 McDonald's claims. For example, McDonald's ad agency OMD told Weather
15 Group that McDonald's did not purchase advertising on The Weather Channel
16 because the network skews towards an older audience. But McDonald's contracts
17 with older-skewing networks, such as Destination America and HLN. These
18 networks have lower ratings than The Weather Channel and have less distribution,
19 and yet McDonald's contracted to advertise on Destination America and HLN, but
20 not The Weather Channel.

21 111. In addition, the ESN Lifestyle Networks target similar audiences as the
22 white-owned networks that McDonald's contracts with for advertising. Recipe.TV,
23 for example, features cooking shows that target similar audiences as Cooking
24 Channel and Food Network. MyDestination.TV features travel-related content that
25 targets similar audiences as Travel Channel and Destination America. Yet,
26 McDonald's advertises on these white-owned networks but not the ESN Lifestyle
27 Networks.

28 112. In the past, McDonald's African American ad agency Burrell has

1 claimed that McDonald's did not contract to advertise on the ESN Lifestyle
 2 Networks because they were not widely distributed. But the ESN Lifestyle
 3 Networks have successfully increased their distribution over the past several years
 4 and are now distributed by all major MVPDs to over 180 million cumulative
 5 subscribers in all 50 states. Entertainment Studios presented McDonald's African
 6 American ad agency with this data, and yet McDonald's still refuses to contract,
 7 while at the same time contracting with white-owned networks that have smaller
 8 distribution.

9 **F. McDonald's Racial Discrimination Is A "But For" Cause**

10 113. The U.S. Supreme Court held in *Comcast Corp. v. National*
 11 *Association of African American-Owned Media*, 140 S. Ct. 1009 (2020), that, to
 12 allege "but-for" causation, plaintiffs are only required to allege that "but for race,
 13 [they] would not have suffered a loss of a legally protected right."

14 114. After *Comcast*, the U.S. Supreme Court in *Bostock v. Clayton County,*
 15 *Georgia*, 140 S. Ct. 1731 (2020), provided further guidance on the "but-for" test
 16 generally and particularly with respect to discrimination claims. The Court in
 17 *Bostock* held the "but-for test directs us to change one thing at a time and see if the
 18 outcome changes. If it does, we have found a but-for cause." The Court explained
 19 that a plaintiff does not need to prove that discrimination was the sole cause.

20 115. The Court in *Bostock* explained that the "but-for" test can be a
 21 "sweeping standard" because, "[o]ften, events have multiple but-for causes." The
 22 Court held that a defendant cannot avoid liability by claiming that some other factor
 23 contributed to the alleged injury. The Court held that as long as unlawful
 24 discrimination was one but-for cause, that is sufficient.

25 116. Here, racial discrimination was a but-for cause of the injury alleged
 26 herein under Supreme Court precedent. If Plaintiffs were white-owned,
 27 McDonald's would not have (1) forced Entertainment Studios to deal exclusively
 28 with McDonald's African American advertising agency, (2) deprived Entertainment

1 Studios access to McDonald's general market advertising budget and general market
2 advertising agency, or (3) refused to contract to advertise on The Weather Channel,
3 the ESN Lifestyle Networks and other non-print media owned by Allen.

4 117. If Plaintiffs were white-owned, Plaintiffs would have received tens of
5 millions of dollars in advertising revenue from McDonald's on an annual basis.

6 118. Plaintiffs would also have avoided the costs and burdens they were
7 forced to incur through the racially discriminatory contracting process that
8 McDonald's created. McDonald's forced Entertainment Studios to request
9 advertising contracts through a two-tiered system that gave Entertainment Studios
10 no chance of success. Under this system, it was a virtual certainty that
11 Entertainment Studios would not get a contract from McDonald's for its networks
12 and syndicated programming.

13 119. The costs, burdens and expenses that Entertainment Studios incurred
14 trying to get a contract through this two-tiered process harmed Entertainment
15 Studios. Entertainment Studios seeks compensatory damages and other relief as a
16 result of this discriminatory contracting process.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of 42 U.S.C. § 1981)**

19 120. Plaintiffs incorporate each of the foregoing and subsequent paragraphs
20 as though fully set forth herein.

21 121. McDonald's has engaged in, and is engaging in, pernicious, intentional
22 racial discrimination in contracting in violation of § 1981. Section 1981 broadly
23 prohibits racial discrimination in contracting. The statute is broad, covering "the
24 making, performance, modification, and termination of contracts, and the enjoyment
25 of all benefits, privileges, terms, and conditions of the contractual relationship."

26 122. African Americans are a protected class under § 1981. Entertainment
27 Studios and Weather Group are members of that class because they are African
28 American-owned companies.

123. As alleged herein, Entertainment Studios and Weather Group attempted many times over the years to contract with McDonald's for advertising on the ESN Lifestyle Networks and The Weather Channel, but McDonald's refused. These refusals to contract occurred within the past two years. Yet McDonald's continued to contract with—and make itself available to contract with—similarly situated, white-owned television networks and to advertise on those networks.

124. In addition, McDonald's shut the door for Entertainment Studios and Weather Group, preventing them from accessing McDonald's large, general market advertising budget.

125. Racial discrimination is the but-for cause of McDonald's refusal to contract. If Entertainment Studios and Weather Group were white-owned companies, they would have been able to access McDonald's large, general market advertising budget and they would have received millions of dollars each year from McDonald's in advertising revenue on the ESN Lifestyle Networks and The Weather Channel.

126. McDonald's also subjected Plaintiffs to a racially discriminatory contracting process that is unfair and illegal. By forcing Entertainment Studios to bid for business in the less-favorable African American tier, McDonald's forced Entertainment Studios to incur unnecessary expenses and costs.

127. McDonald's violations of § 1981 as alleged herein caused Plaintiffs to lose advertising revenue, suffer significant lost profits, and experience a substantial diminution in the value of Plaintiffs' businesses, which will conform to proof at trial but is estimated to be \$10 billion, plus punitive damages for intentional, oppressive and malicious racial discrimination.

SECOND CAUSE OF ACTION

(Violation of the Unruh Civil Rights Act)

128. Plaintiffs incorporate each of the foregoing and subsequent paragraphs as though fully set forth herein.

1 129. The Unruh Civil Rights Act creates a cause of action for any person
2 who is denied the right to full and equal accommodations, advantages, facilities,
3 privileges, or services in all business establishments of every kind whatsoever based
4 on that person's sex, race, color, religion, ancestry, national origin, disability,
5 medical condition, genetic information, marital status, sexual orientation,
6 citizenship, primary language, or immigration status.

7 130. California Civil Code section 51.5, subsection (a), provides, in relevant
8 part, that "No business establishment of any kind whatsoever shall discriminate
9 against . . . or refuse to buy from, contract with, sell to, or trade with any person in
10 this state on account of any characteristic listed or defined in subdivision (b) or (e)
11 of Section 51, or of the person's partners, members, stockholders, directors, officers,
12 managers, superintendents, agents, employees, business associates, suppliers, or
13 customers, because the person is perceived to have one or more of those
14 characteristics, or because the person is associated with a person who has, or is
15 perceived to have, any of those characteristics."

16 131. California Civil Code section 51, subsection (b), provides "All persons
17 within the jurisdiction of this state are free and equal, and no matter what their sex,
18 race, color . . . are entitled to the full and equal accommodations, advantages,
19 facilities, privileges, or services in all business establishments of every kind
20 whatsoever."

21 132. McDonald's has violated the California Civil Code section 51.5 by
22 intentionally discriminating against Plaintiffs on the basis of race.

23 133. Plaintiffs are members of a protected class (African American-owned
24 businesses), that were qualified to do business with McDonald's and qualified to
25 receive advertising revenue for the ESN Lifestyle Networks and The Weather
26 Channel, but were denied the opportunity to contract with McDonald's for such
27 revenue because they are African American-owned networks.

28 134. As a result of McDonald's intentional racial discrimination, Plaintiffs

are entitled to actual and treble damages in addition to attorneys' fees and costs, which all together are estimated to exceed \$10 billion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. General and special damages according to proof at trial;
2. Punitive and exemplary damages;
3. Treble damages under the Unruh Civil Rights Act;
4. Attorneys' fees, costs and interests allowable under the law; and
5. For such other relief as the Court deems just and proper.

DATED: December 23, 2021 MILLER BARONDESS, LLP

By: /s/ Louis R. Miller
 LOUIS R. MILLER
 Attorneys for PLAINTIFFS

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable asserted in the Complaint.

DATED: December 23, 2021 MILLER BARONDESS, LLP

By: /s/ Louis R. Miller
LOUIS R. MILLER
Attorneys for PLAINTIFFS

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067.

On December 23, 2021, I served true copies of the following document(s) described as:

**PLAINTIFFS ENTERTAINMENT STUDIOS NETWORKS, INC. AND
WEATHER GROUP, LLC'S THIRD AMENDED COMPLAINT**

on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 23, 2021, at Los Angeles, California.

/s/ Tisarai Johnson

Tisarai Johnson